

REMARKS/ARGUMENTS

Claims 1-16 and 21-23 are presented for examination and claims 17-20, which were withdrawn in response to a restriction requirement, are cancelled by this response. Claims 1 and 8 are amended to more distinctly describe the subject matter of applicant's invention. Support for these amendments appear at least at page 19, lines 19-20 of the application. No new matter is added by these amendments and the amendments are intended solely to clarify the claims and are not intended to affect the scope of the claims.

A. Rejections under 35 U.S.C. 102.

1-4, 8-9, and 15-16 were rejected under 35 USC 102 based upon Nagatomo. This rejection is respectfully traversed.

Claims 1 and 8 call for, in varying language, one or more intermediary servers coupled to the network to receive requests from client applications, and a data storage mechanism coupled to the network at topological position with respect to the client applications that is unique from a topological position of the intermediary servers. At least this feature of claim 1 is not shown or suggested in the Nagatomo reference.

The Office Action asserts that data storage 1 is at a topological position different from that of server 2 in Nagatomo's Fig. 1. Claims 1 and 8 are amended to clarify that the invention claimed relates to a different topological position with respect to the client applications (e.g., the topological location of elements 4, 5, 6 and 7 in Nagatomo's Fig. 1). As set out in claims 1 and 8, the relative topological distance refers to where the claimed elements couple to the network. The amendment to the claims is believed to clarify this feature of claims 1 and 8. As noted in the previous response, Nagatomo shows a data server that is integrated with and located at the identical topological position as the database. Nagatomo's database 1 does not support a separate connection to network 3, hence, must be at the same topological location with respect network 3 or with respect to client-side devices 4-7 as is server 2. Hence, the Nagatomo reference does not show or suggest this feature of claims 1 and 8.

Moreover, it is still believed that to the extent that database 1 in Nagamoto is analogous to the data mechanism of claim 1, it is not coupled to the network as called for in claims 1 and 8. Instead, it is coupled to the data server 2, and can access the network only through data server 2. The office action "Response to Arguments" does not respond to this argument pointed out in the Response filed November 10, 2003.

For at least these reasons, claims 1 and 8 are neither shown or suggested by Nagamoto. Similarly, dependent claims 2-4, 9, and 15-16 are allowable for at least the same reasons as claims 1 and 8 from which they depend.

Claims 21-23 were rejected under 35 USC 102 based upon Burdick. This rejection is respectfully traversed.

Claims 21 and 22 call for, in varying language, one or more intermediary servers coupled to the network to receive requests from client applications, and a data storage mechanism coupled to the network at topological position with respect to the client applications that is unique from a topological position of the intermediary servers.

At least these features of claims 21 and 22 are not shown or suggested in the Burdick reference.

The Office action merely restates the verbatim rejection from the first Office action and fails to recognize the additional limitation added in the November 10, 2003 amendment. Accordingly, the office action fails to state a prima facie case of anticipation. Moreover, Burdick fails to show an intermediary server that is used to obtain substitute database content in response to determining that the data storage mechanism is busy/unavailable and delivering the substitute content to the client application that generated the request for database content.

Although the Office Action does not specifically identify an "intermediate server", it is believed that the component in Burdick et al. most closely

resembling an intermediate server is front end server 112. Assuming for the sake of argument that this was the Office action's intent, front end server 112 "may note that unavailability of the data storage mechanism...and continue processing the complex request" (col. 9, lines 17-19). Noting that a data storage mechanism is unavailable in a log file is very different from the claimed actions of obtaining substitute database content and delivering the substitute content to the requesting client. Burdick et al. does not show or suggest any substitute content. Moreover, Burdick et al. do not seem to contemplate sending any substitute content (not even the information noted in the log file) to the requesting client. For at least this reason claim 21 should be allowed over the relied on reference.

Independent claim 22 calls for implementing at least some of the database management system in local data storage within the intermediary server. As set out above, the only element in Burdick that can be considered to be an intermediary server would be front end server 112. However, Burdick does not show or suggest implementing a portion of the database 106 in front end server 112. Local database servers 105 and remote database servers 107 are not fairly considered "intermediary servers" as called for in claim 22 because they are located at the same location of the network 111 as the data storage that they serve. For at least this reason claim 22 and claim 23 that depends from claim 22 should be allowed over Burdick et al.

B. Rejections under 35 U.S.C. 103.

Claims 5-7 and 10-14 were rejected under 35 U.S.C. 103 as unpatentable over Nagatomo in view of Colby. This rejection is respectfully traversed.

Claims 5-7 depend from claim 1 and are distinct with respect to Nagatomo for at least the reasons stated above. Colby does not show or suggest the modifications that would be required to implement an intermediary server in Nagatomo. Similarly, claims 10-15 depend from claim 8 and are not made obvious by Nagatomo in view of Colby for at least the same reasons as claim 8 set out above.


C. Conclusion.

In view of all of the above claims 1-16 and 21-23 are believed to be allowable and the case in condition for allowance which action is respectfully requested. The references that were cited and not relied upon are believed to be no more pertinent than those references that were relied upon.

No fee is believed to be required by this response as determined on the accompanying transmittal letter. Should any fee be required, please charge Deposit 50-1123.

Respectfully submitted,

April 12, 2004



Stuart T. Langley, Reg. No. 33,940
Hogan & Hartson LLP
One Tabor Center
1200 17th Street, Suite 1500
Denver, Colorado 80202
(720) 406-5335 Tel
(303) 899-7333 Fax